It is competent for the prosecuting officer to explain his positions and illustrate the testimony by diagrams as well as by word of mouth. This was all the use that was made of the plans. No witness who hears a conversation can be excluded from testifying in relation to it because it was not addressed to him, and the party to whom it was addressed is a witness in the case.

Ample opportunity was allowed to contradict any government witness, or to show the *animus* of any such witness toward the prisoner.

The evidence offered and excluded was purely immaterial. We find no good cause for a new trial, upon a careful consideration of the whole case, and accordingly the entry must be,

Exceptions overruled.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

UNITED STATES CIRCUIT AND DISTRICT COURTS.[1]
SUPREME JUDICIAL COURT OF MAINE.[2]
SUPREME COURT OF NEW YORK.[3]

ACCRETION. See *Mortgage.*

BANKRUPTCY.

Purchaser of Claims—When may prove.—A party who in good faith purchases claims against a bankrupt with the intention of stopping proceedings and giving him time, should not be deprived of participation in the estate: *In re Strachan*, D. C. West. Dist. Wis., 3 Bissell.

To enable him to prove them, however, he should take an assignment. A simple receipt of payment is not sufficient: *Id.*

Such claims should be proven as of date of adjudication, but may draw interest to date of actual payment: *Id.*

The Bankrupt Act should not be so strictly construed as to prevent a debtor from making every effort to extricate himself from bankruptcy proceedings: *Id.*

The forms prescribed in the General Rules are not binding, but may be altered to suit circumstances: *Id.*

Insolvency—A Condition of Fact, not of Belief.—To render a mortgage void under the thirty-fifth section of the Bankrupt Act it is not necessary that the debtor knew or believed himself insolvent. The section treats of insolvency as a condition of fact, not of belief, and with knowledge of which and its consequences he is chargeable in law: *Hall* v. *Wager*, C. C. West. Dist. Wis., 3 Bissell.

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[1] From J. H. Bissell, Esq., Reporter; to appear in Vol. 3 of his Reports.

[2] From Edwin B. Smith, Esq., Reporter; to appear in 61 Me. Reports.

[3] From Hon. O. L. Barbour, to appear in Vol. 65 of his Reports.

It follows, as a logical sequence, that when a man insolvent in fact gives a mortgage to one existing creditor he does so with a view to give him a preference: *Id.*

The Act of 1841 declares void preferences made by a party *contemplating* bankruptcy; the Act of 1867 includes those made by a party *being insolvent*, and the decisions under the former act are not always applicable to the present statute: *Id.*

The purpose of the act being to enforce the equal distribution of the estate, every act of an insolvent that tends to defeat that purpose should be construed strictly as against him, and courts should indulge every presumption permissible by the well settled rules of law to secure the full benefit of this cardinal principle of the law: *Id.*

The strict definition of insolvency usually given in commercial centres should not be applied in country places. A party should be held insolvent only when he fails to meet his debts according to the usages and customs of the place of his business—the rule should be in harmony with the general custom of the place: *Id.*

If an insolvent give a mortgage to a creditor who has reasonable cause to believe him insolvent, the fraud upon the Bankrupt Act is complete as to both: *Id.*

The question as to the creditor is whether he "had reasonable cause to believe" the debtor insolvent—not what he *did* believe; the latter is immaterial. The creditor is not constituted the sole judge of the sufficiency of the evidence of his debtor's insolvency—that is for the court to determine, the security being attacked: *Id.*

Where a debtor had, during two years, paid off only a small portion of an overdue debt, had sold out the stock of goods for which the account was made, and transferred a part of the paper received therefor, had applied for extensions and been refused, had previously declined to execute a mortgage on the ground that it would injure his credit, and had been pressed by his different creditors—these facts constitute reasonable cause for belief of insolvency, and the creditor cannot escape from the consequences of knowledge of them: *Id.*

Insolvent Partners—Trustees for Firm Creditors—Transfer to Copartner.—When partners are in fact insolvent, they should be considered in equity as holding the partnership effects in trust for the benefit of the firm creditors, and cannot by a transfer of the interest of one to the other defeat this trust: *In re. Cook and Gleason*, D. C. West. Dist. Wis., 3 Bissell.

A sale by one partner to his copartner, when the firm is insolvent and on the eve of bankruptcy, is presumptively fraudulent as to the firm creditors, and the courts should set it aside and distribute the property as firm property: *Id.*

The legal effect of such transfer being to change the order of payment and prefer certain creditors, the private creditors over the firm creditors, it would be void as creating a preference contrary to the provisions of section 35 of the Bankrupt Law: *Id.*

Partner can file Petition after Receiver appointed.—The bankrupt court has jurisdiction of a petition by one partner to have the firm declared bankrupts, though proceedings are pending in a state court to wind up the partnership, and a receiver had been appointed who had taken possession of the assets: *In re Noonan*, C. C. East. Dist. Wis., 3 Bissell.

Such a petition being voluntary as to him, it is not necessary that there should be an act of bankruptcy alleged: *Id.*

A dissolution by the act of all or any of the partners does not put an end to the power of the bankrupt court: *Id.*

So long as any unfinished business, debts, credits, or assets remain, the bankrupt court has jurisdiction, a proper case being made: *Id.*

No Jurisdiction if Amount reduced below that specified in the Act—Costs cannot be added, to give Jurisdiction—Nor Counsel Fees.—The District Court has no jurisdiction of an involuntary case in bankruptcy, unless it appears on the trial that the debtor, at that time, owes debts provable under the act exceeding the sum of three hundred dollars, and is indebted to the petitioning creditors in the amount of two hundred and fifty dollars. This is true even through the debtor, at the time of the filing of the petition, was indebted to exceed those sums. When his indebtedness, by subsequent payments, is reduced below those sums, the court loses jurisdiction: *In re Skelley*, D. C. North. Dist. Ill., 3 Bissell.

The latter clause of the forty-first section of the act was intended to allow the debtor to disprove on the trial all the material allegations of the petition: *Id.*

Payments made by the debtor to the petitioning creditors are material facts on the issue on denial of bankruptcy, and the debtor can introduce evidence of such payments without a special traverse of the amount of his indebtedness: *Id.*

The receipt of such payments by the petitioning creditors to an amount sufficient to reduce this indebtedness below the minimum established by the act, must be considered as a waiver of the alleged act of bankruptcy: *Id.*

The petitioning creditors cannot add the costs paid and incurred by them to their debt in order to raise it above the jurisdictional limit. Such costs are not a part of their debt. The debtor must owe them two hundred and fifty dollars or they have no right to make costs. Nor can the creditors add counsel fees to their debt: *Id.*

In this case, the respondent, having been guilty at the time of the filing of the petition, was ordered to pay all costs up to the time of filing his denial, except the docket fee: *Id.*

BILLS AND NOTES. See *Pleading.*

CERTIORARI.

A party is entitled to a common law *certiorari* to review the determination of a body or officer acting judicially, when he has no other remedy: *The People ex rel. Akin* v. *Morgan et al.*, 65 Barb.

To entitle a party to a *certiorari*, he or it must have an interest in the proceedings that are intended to be brought up by it: *Id.*

The court, in reviewing proceedings, in *certiorari*, is governed by the return of the officers or body to whom the writ is directed. It will not take into consideration papers annexed to the return: *Id.*

CONSTITUTIONAL LAW.

Military Commissions.—Military commissions and their acts, during the late civil war, in states where the courts were undisturbed, were unconstitutional: *Milligan* v. *Hovey*, C. C. Ind., 3 Bissell.

Liability of Members and of Army Officers.—The members of such commissions, and officers of the United States army, are liable for arrest and imprisonment ordered by them in such states, even though ratified and approved by the Executive Department of the Government: *Id.*

They are also liable for imprisonment suffered beyond their jurisdiction, if such imprisonment was the natural and necessary result of the sentence pronounced by them: *Id.*

Limitation of Action.—The limitation imposed by the Act of Congress of March 3d 1863, was within the power of Congress, and binding upon state tribunals: *Id.*

The defendants are not liable for any acts, nor any portion of the term of imprisonment, prior to two years before the commencement of the action; the statute begins to run notwithstanding that the imprisonment was a continued act: *Id.*

It seems that an Act of Congress would not be complete justification, if the trial by a military commission was forbidden by the Constitution: *Id.*

Damages.—The damages to be allowed should be compensatory, and not exemplary or punitive: *Id.*

Criminal Law.

Manslaughter.—In this case the jury were instructed that, if the respondent, "in the heat of blood, and upon sufficient provocation," threw the deceased down stairs, the offence was manslaughter; subsequent instructions showed that this word "sufficient" was used as equivalent to the words "great and sudden:" *Held*, that the prisoner had no cause for exceptions: *State* v. *Murphy*, 61 Me.

Debtor and Creditor. See *Surety.*

Poor Debtor's Bond—Oath not in form of the Statute.—A poor debtor's bond approved by justices not selected agreeably to the statute, is good only at common law: *Smith* v. *Brown*, 61 Me.

It is in compliance with the conditions of such bond if the oath taken be that mentioned therein, though this differ from the one poor debtors are required to take by the statutes in force at the time of its administration: *Id.*

If such bond provide for notice to the creditors of debtor's disclosure, but fail to say how such notice shall be served, service upon one of them is sufficient: *Id.*

No appraisal of demands disclosed upon a proceeding under a common-law bond is necessary unless required by the terms of the obligation: *Id.*

The record of the justices hearing such disclosure held sufficient, though not showing that they were disinterested, or why the creditor did not select one of them, nor where they met, nor that any disclosure was had: *Id.*

Poor Debtor's Bond—Jurisdiction of Justices—Performance.—To entitle a poor debtor to chancery of his bond, the justices hearing his disclosure must be selected according to law, and have jurisdiction over that particular disclosure; otherwise the execution and fees will be the measure of damages. *Blake* v. *Brackett*, 47 Maine 28, affirmed; *Foss*

v. *Edwards*, 47 Maine 145, overruled so far as relates to the question of damages: *Hackett* v. *Lane*, 61 Me.

The only bar to an action upon a poor debtor's bond is a complete fulfilment of one of its three alternative conditions, *i. e.* payment of debt, surrender of debtor to the jailor, or a disclosure: *Id.*

Plea of performance estops debtor from claiming that the bond, by reason of non-conformity to the terms of the statute, is only good at common law, and so subject to chancery: *Id.*

Dividends.

A dividend earned, but not declared, belongs to the person owning the stock when the dividend is actually declared, and not to the person who was owner of the stock prior to such declaration: *Brundage* v. *Brundage*, 65 Barb.

Dower. See *Husband and Wife.*

Eminent Domain.

Condemnation—Judiciary Act—Jurisdiction of Federal Courts extends to subsequent Cases.—A proceeding under an Act of Congress to condemn property is a "suit of a civil nature at common law or in equity," within the meaning of the Judiciary Act: *U. S.* v. *Block* 121, C. C. North. Dist. Ill., 3 Bissell.

The construction of that clause cannot be limited to such suits as were known at the time of the passage of the act. Whenever an act is passed which authorizes the commencement of a suit, jurisdiction of the case is thereby vested in the Federal courts, if the character of the parties warrants it, and it comes within the meaning of the statute. The grant of power in this act is prospective: *Id.*

The clause, "suits of a civil nature at common law or in equity," was used in contradistinction to admiralty and criminal cases. It does not restrict the jurisdiction to old and settled forms, but includes all suits in which legal rights are to be ascertained and determined: *Id.*

Congress has power to clothe the Federal courts with authority to proceed for the condemnation of property in conformity with a particular state statute: *Id.*

Though the officers of the government had stated to the owners of the ground the price which the government was willing to give, yet if other parties had liens and claims against the property, which they were not willing to surrender, condemnation proceedings are necessary: *Id.*

The Secretary of the Treasury being the mere officer of the government, when proceedings are instituted by him under a special law they become necessarily proceedings on the part of the United States; and although the petition be filed by the district attorney, it is within not only the spirit, but the letter of the Acts of Congress: *Id.*

Equity. See *Partnership; Trustee.*

Flowage. See *Pleading.*

Fraud. See *Insurance.*

FRAUDS, STATUTE OF. See *Sale.*

HUSBAND AND WIFE. See *Trustee.*

Promise of Wife to pay Husband's Debt.—A married woman is not liable upon a special promise to pay her husband's debt, made in his lifetime, if it be not in writing, and in such form as to bind her separate estate: *Lennox et al.* v. *Eldred*, 65 Barb.

Neither is a verbal promise to pay such debt, made after the decease of her husband, a valid promise. It is, at best, a simple promise to pay the debt of another, and is without consideration, and void by the Statute of Frauds: *Id.*

Dower—Infant Feme Covert.—Prior to Acts of 1863, c. 215 (R. S. c. 103, § 6), a minor *feme covert* could not bar her right to dower by joining in the execution of her husband's deed for that purpose; such deed was voidable by her, on attaining her majority: *Dela* v. *Stanwood*, 61 Me.

That act (c. 215, Acts of 1863) could not defeat the existing right of a widow to dower: *Id.*

INFANT. See *Husband and Wife; Removal of Causes.*

INSOLVENT. See *Bankruptcy; Debtor and Creditor.*

INSURANCE.

Over-valuation—Fraud—New Trial.—Whether an over-valuation and proof of loss be fraudulent or not, is a question of fact for the jury; and where there is "much conflict of testimony," and that adduced by plaintiff is sufficient, if believed, to justify a verdict in her favor, such verdict will not be set aside if the discrepancy between the value of the property as found by the jury, and the amount insured thereon be not so great as to render it incredible that the over-valuation in the application, and over-estimate in the proof of loss, could have occurred without positive dishonesty or fraudulent intent on the part of the plaintiff: *Williams* v. *Phœnix Ins. Co.*, 61 Me.

LIMITATIONS, STATUTE OF. See *Constitutional Law; Partnership.*

MILITARY COMMISSION. See *Constitutional Law.*

MORTGAGE.

Of Plants and Shrubs—Accretion by Growth of.—Plants and shrubs, the growth of cuttings from plants and shrubs mortgaged, pass to the mortgagee by accession: *Bryant* v. *Pennell*, 61 Me.

PARTNERSHIP. See *Pleading.*

Equity—Partnership Accounts—Limitations, Statute of—Account—Demand.—Where, in a bill in equity against several defendants, all of whom appear, and all but one allow the bill to be taken *pro confesso*, the existence of a common interest in property, and the transaction of a joint business is admitted, and the complainant (a partner) applies for an adjustment of the accounts respecting it, the court will not accept a general denial of indebtedness on the part of the respondent, however positive, and dismiss the bill, without reference to a master for an inves-

tigation of accounts, notwithstanding such denial may be accompanied with a statement of circumstances rendering it probable that, as to such respondent, the denial may prove well founded; especially, when the respondent does not assert his full knowledge of all the details of the accounts. The master to whom the case is referred may receive proof that the partnership transactions extended over a longer period of time than that specified in the answer: *Lawrence* v. *Rokes*, 61 Me.

While the court, in equity, will ordinarily give full effect to the statutes of limitation, in so doing it acts in obedience to the spirit of those statutes, and "rather upon the reason and principles on which, as positive rules, they are founded, than the rules themselves;" so that, if, by the laches of the complainant, the respondents have lost their evidence, or are placed in a disadvantageous position, the court will deal with the remedy as if barred in equity, even although the full term of the Statute of Limitations may not have elapsed; and, on the other hand, where there has been no change in the condition and position of the parties, and peculiar circumstances appear to justify the delay, appropriate relief will not be refused, although a strict application of limitation rules might seem to require it; certainly not where the respondent admits the reception of firm assets within six years: *Id.*

To operate as a bar, the benefit of the statute must be expressly claimed in the answer: *Id.*

Whether actions of account at law, and the analogous remedy by bill in equity are now subject to any other than the general limitations of twenty years, *quære? Id.*

The making, or omission to make, a demand before filing the bill, only affects the question of costs; especially where the answer shows such a difference between the parties as to indicate that a demand would be a mere fruitless formality: *Id.*

Pleading.

Complaint for Flowage—Failure to allege Title to Land.—A complaint for flowage containing no allegation of defendant's ownership of the land on which the dam was erected, *held* bad on demurrer: *Jones* v. *Skinner*, 61 Me.

Amendment—New Count to Declaration—New Cause of Action.—In Maine a promissory note, or an *accepted* bill of exchange, is *primâ facie* evidence of payment of the original debt for which it was given; *aliter* as to an *unaccepted* bill: hence, a new count declaring upon such debt may be added by way of amendment to a declaration upon an unaccepted bill, since it introduces no new cause of action: *Strang* v. *Hirst*, 61 Me.

Partnership—Suit by surviving Partner—Statement in lieu of Plea.—Upon a debt due a partnership, one of the members of which has deceased, the action must be brought in the names of the survivors, whether for their own benefit, or under the control of the administrator of the deceased partner: *Strang* v. *Hirst*, 61 Me.

An objection to plaintiff's right to maintain suit as surviving partner, because he has not given the bond required by law, must be taken in abatement, or it will be considered as waived: *Id.*

A brief statement under the R. S. of Maine, c. 82, § 18, is a substitute for a special plea at common law, and may be held bad for duplicity: *Id.*

Removal of Causes.

Application for Removal—When to be made.—Under the Act of 1789 the removal can only be made on application of the defendant at the time of entering his appearance in the state court: *Kingsbury* v. *Kingsbury*, C. C. North. Dist. Ill., 3 Bissell.

It seems that where a case has gone to decree in the state court it is too late for any of the parties to remove it to this court: *Id.*

Minor cannot consent to Removal.—A minor is incapable of consenting to a change of forum. The state court having obtained jurisdiction of his person and property, neither his guardian *ad litem* nor any other person for him can consent to a removal: *Id.*

Sale.

Delivery—Statute of Frauds.—If it be agreed that goods sold shall be hauled by the vendor to a place specified, it does not necessarily follow that the title thereto does not pass till they reach the place designated. The property may pass so as to take the case out of the Statute of Frauds, at the time the agreement is made, if the parties so intend; and whether or not such was their intention, in any given case, is a question for the jury, to be determined from the words, acts and conduct of the parties, and all the circumstances: *Dyer* v. *Libby*, 61 Me.

Stamp.

Omission of—Intent to defraud the Revenue.—The assignment of a mortgage of real estate in October 1863, not stamped as then required by the laws of the United States, is not therefore void unless it appear that the stamp was omitted with intent to defraud the revenue: *Dela* v. *Stanwood*, 61 Me.

Surety.

Payment of the Debt by Surety's Notes.—If a surety give his notes to the creditor under an agreement, not known to the principal, that *when paid* they shall be in full satisfaction of the original debt, and part only of the notes are paid; this does not discharge the principal, who may be sued upon the original contract and held for so much as remains due thereon after deducting the amounts paid by the surety: *Emery* v. *Richardson*, 61 Me.

Tax-Payers.

Right to restrain Acts of Municipal Authorities.—A tax-payer, at large, of a municipality, having no private interest in the question, more than other tax-payers, cannot maintain an action in equity, as against the public authorities, to set aside or prevent acts claimed to be illegal: *Tifft* v. *The City of Buffalo*, 65 Barb.

In an action brought by the plaintiff in behalf of himself and other tax-payers of a city, to restrain the common council from selling to a hotel company a park or square, in said city, called "Court-House

Square," the complainant did not allege that the plaintiff owned any land fronting on said park; and although he was a resident citizen and a tax-payer in said city, and owned land in the vicinity of said park, he had no interest in such park or square, more than the citizens generally of the city: *Held*, that the plaintiff had no standing in a court of equity entitling him to maintain the action; and that an injunction issued therein, was improperly granted and continued: *Id.*

Although it has been held, in many cases, that a tax-payer cannot maintain an action in his own name, to restrain the collection of a tax assessed upon the inhabitants of a town, village or city of which he is a resident, nor to set aside the proceedings of municipal corporations which only affect him as they do other inhabitants of such corporation; yet he can maintain such an action when he sustains some specific injury: *The People ex rel. Akin* v. *Morgan et al.*, 65 Barb.

Certiorari.—It does not follow that because a tax-payer may not maintain an action to restrain the assessment or collection of a tax, or to restrain or set aside proceedings of a municipal corporation, he may not be entitled to a *certiorari* to review the proceedings of those who assessed the tax, or performed the corporate act, and to set it aside if found to have been done in violation of law: *Id.*

The decision of assessors, in proceedings under the statute for the bonding of towns in aid of a railroad, that the consents of the requisite number of tax-payers have been obtained, &c., is a judicial decision, and may be reviewed by *certiorari*, at the suit of a tax-payer: *Id.*

Trespass.

Title to Locus in Quo—Evidence.—In an action of *trespass quare clausum* evidence is admissible that the deed by which plaintiff claims title to the *locus in quo*, though executed and recorded prior to the date of the writ, was not delivered till after suit brought: *Maxwell* v. *Mitchell*, 61 Me.

Evidence reported upon a motion for new trial, which has been overruled by consent, cannot be considered in a hearing upon exceptions not referring to such testimony: *Id.*

Trustee.

Under Marriage Settlement—Change of Investment—Relief of Trustee from Liability.—Where by the terms of a marriage settlement, the trustee is to change the investment of the trust funds upon the joint request in writing of the *cestui que trust* and her husband, such written request is essential to relieve the trustee from liability for loss arising from any change of investment made by him: *Crocker* v. *Pierce*, 61 Me.

If, after the determination of the trust by the death of the husband, in an adjustment between the trustee and the beneficiary of the matters of the trust, there be in the property conveyed to her as the consideration of her release to the trustee, an "inadequacy of price and inequality of advantages in the bargain," equity will set aside the release so obtained and afford relief: *Id.*

United States Courts. See *Eminent Domain.*